

Introduced by Senator Romero

February 21, 2007

An act to amend Sections 1037, 1037.1, 1037.2, 1037.4, and 1037.5 of the Evidence Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 407, as introduced, Romero. Domestic violence.

Existing law generally provides that no person has a privilege to refuse to be a witness or to refuse to disclose any matter or produce any writing, object, or other thing. However, a victim of domestic violence has a privilege to refuse to disclose and to prevent another from disclosing, a confidential communication, as defined, between the victim and a domestic violence counselor, as specified.

The California Constitution requires that a statute which would exclude relevant evidence in any criminal proceeding be enacted by a $\frac{2}{3}$ vote.

This bill would expand the scope of the privilege by expanding the definition of a domestic violence counselor, by expanding the definition of a confidential communication, and by expanding the scope of the privilege to specifically apply in any criminal, civil, legislative, administrative, or other proceeding. The bill would also provide that the privilege terminates upon the death of the victim.

Because the bill would exclude relevant evidence in criminal proceedings, the bill would require a $\frac{2}{3}$ vote.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1037 of the Evidence Code is amended to read:

1037. As used in this article, “victim” means ~~any person who suffers an adult or a minor who consults a domestic violence counselor for the purpose of securing advice or assistance concerning a mental, physical, or emotional condition caused by~~ domestic violence, as defined in Section 1037.7.

SEC. 2. Section 1037.1 of the Evidence Code is amended to read:

1037.1. (a) As used in this article, “domestic violence counselor” means ~~any of the following: a person who is employed by a domestic violence victim service organization, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of domestic violence, who meets one of the following requirements:~~

~~(a) A person who is employed by any organization providing the programs specified in Section 18294 of the Welfare and Institutions Code, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of domestic violence, who has received specialized training in the counseling of domestic violence victims, and who meets one of the following requirements:~~

(1) Has a master’s degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in the counseling of domestic violence victims.

(2) Has at least 40 hours of training as specified in this paragraph and is supervised by an individual who qualifies as a counselor under paragraph (1); ~~or is a psychotherapist, as defined in Section 10110 and is an employee of a domestic violence victim service organization as defined in this article.~~ The training, supervised by a person qualified under paragraph (1), shall include, but need not be limited to, the following areas: history of domestic violence, civil and criminal law as it relates to domestic violence, *the domestic violence victim-counselor privilege and other laws that protect the confidentiality of victim records and information*, societal attitudes towards domestic violence, peer counseling techniques, housing, public assistance and other financial resources

1 available to meet the financial needs of domestic violence victims,
2 and referral services available to domestic violence victims.

3 ~~(b) A person who is employed by any organization providing~~
4 ~~the programs specified in Section 13835.2 of the Penal Code,~~
5 ~~whether financially compensated or not, for the purpose of~~
6 ~~counseling and assisting victims of domestic violence, and who~~
7 ~~meets one of the following requirements:~~

8 ~~(1) Is a psychotherapist as defined in Section 1010; has a~~
9 ~~master's degree in counseling or a related field; or has one year~~
10 ~~of counseling experience, at least six months of which is in~~
11 ~~counseling victims of domestic violence.~~

12 ~~(2) Has the minimum training for counseling victims of domestic~~
13 ~~violence required by guidelines established by the employing~~
14 ~~agency pursuant to subdivision (c) of Section 13835.10 of the~~
15 ~~Penal Code, and is supervised by an individual who qualifies as a~~
16 ~~counselor under paragraph (1). The training, supervised by a person~~
17 ~~qualified under paragraph (1), shall include, but not be limited to,~~
18 ~~the following areas: law, victimology, counseling techniques, client~~
19 ~~and system advocacy, and referral services.~~

20 *(b) As used in this article, "domestic violence victim service*
21 *organization" means a nongovernmental organization or entity*
22 *that provides shelter, programs, or services to victims of domestic*
23 *violence or their children, either directly or through other*
24 *contractual arrangements, including, but not limited to, domestic*
25 *violence shelter-based programs, as described in Section 18294*
26 *of the Welfare and Institutions Code, and other programs with the*
27 *primary mission to provide services to victims of domestic violence*
28 *whether or not that program exists in an agency that provides*
29 *additional services.*

30 SEC. 3. Section 1037.2 of the Evidence Code is amended to
31 read:

32 1037.2. (a) As used in this article, "confidential
33 communication" means *any* information transmitted between the
34 victim and the counselor in the course of their relationship and in
35 confidence by a means which, so far as the victim is aware,
36 discloses the information to no third persons other than those who
37 are present to further the interests of the victim in the consultation
38 or those to whom disclosures are reasonably necessary for the
39 transmission of the information or an accomplishment of the
40 purposes for which the domestic violence counselor is consulted.

1 ~~It~~ *The term includes, but is not limited to, all information regarding*
2 *the facts and circumstances involving all incidences of domestic*
3 *violence, as well as all information about the children of the victim*
4 *or abuser and, information about the relationship of the victim*
5 *with the abuser, and personally identifying information, as defined*
6 *in subdivision (b) of Section 1798.79.8 of the Civil Code, about*
7 *the victim or the victim's children. The term also includes any*
8 *reports, records, notes, correspondence, memoranda, or other*
9 *documentation prepared by the counselor or the victim which*
10 *contains advice, opinions, theories, or other information provided*
11 *during the counseling relationship or based on the communications*
12 *between the victim and the counselor.*

13 (b) The court may compel disclosure of information received
14 by a domestic violence counselor which constitutes relevant
15 evidence of the facts and circumstances involving a crime allegedly
16 perpetrated against the victim or another household member and
17 which is the subject of a criminal proceeding, if the court
18 determines that the probative value of the information outweighs
19 the effect of disclosure of the information on the victim, the
20 counseling relationship, and the counseling services. The court
21 may compel disclosure if the victim is either dead or not the
22 complaining witness in a criminal action against the perpetrator.
23 The court may also compel disclosure in proceedings related to
24 child abuse if the court determines that the probative value of the
25 evidence outweighs the effect of the disclosure on the victim, the
26 counseling relationship, and the counseling services.

27 (c) When a court rules on a claim of privilege under this article,
28 it may require the person from whom disclosure is sought or the
29 person authorized to claim the privilege, or both, to disclose the
30 information in chambers out of the presence and hearing of all
31 persons except the person authorized to claim the privilege and
32 such other persons as the person authorized to claim the privilege
33 consents to have present. If the judge determines that the
34 information is privileged and shall not be disclosed, neither he nor
35 she nor any other person may disclose, without the consent of a
36 person authorized to permit disclosure, any information disclosed
37 in the course of the proceedings in chambers.

38 (d) If the court determines that information shall be disclosed,
39 the court shall so order and inform the defendant in the criminal
40 action. If the court finds there is a reasonable likelihood that any

1 information is subject to disclosure pursuant to the balancing test
2 provided in this section, the procedure specified in subdivisions
3 (1), (2), and (3) of Section 1035.4 shall be followed.

4 SEC. 4. Section 1037.4 of the Evidence Code is amended to
5 read:

6 1037.4. As used in this article, “holder of the privilege” means:

7 (a) The victim when he or she has no guardian or conservator.

8 (b) A guardian or conservator of the victim when the victim has
9 a guardian or conservator, *unless the guardian or conservator is*
10 *accused of perpetrating domestic violence against the victim.*

11 SEC. 5. Section 1037.5 of the Evidence Code is amended to
12 read:

13 1037.5. (a) A victim of domestic violence, whether or not a
14 party to the action, has a privilege to refuse to disclose, and to
15 prevent another from disclosing, a confidential communication
16 between the victim and a domestic violence counselor *in any*
17 *criminal, civil, legislative, administrative, or other proceeding* if
18 the privilege is claimed by any of the following persons:

19 ~~(a)~~

20 (1) The holder of the privilege.

21 ~~(b)~~

22 (2) A person who is authorized to claim the privilege by the
23 holder of the privilege.

24 ~~(c)~~

25 (3) The person who was the domestic violence counselor at the
26 time of the confidential communication. However, that person
27 may not claim the privilege if there is no holder of the privilege
28 in existence or if he or she is otherwise instructed by a person
29 authorized to permit disclosure.

30 (b) *The privilege afforded by this article terminates upon the*
31 *death of the victim.*